No. 80-959

Supreme Court of the United States

October Term, 1980

STATE OF OHIO,
Petitioner,

vs.

GARY EVERETT THOMPSON

and

MYRON LESTER TILTON,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIFTH APPELLATE DISTRICT OF OHIO

BRIEF OF RESPONDENTS IN OPPOSITION

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TO: The Honorable Chief Justice and the Honorable Associate Justices of the Supreme Court of the United States

OBJECTIONS TO JURISDICTION

Respondents respectfully submit that there is no substantial federal question which will require this Court to review this case.

The Court of Appeals of the Sixth Judicial District, sitting by special assignment, decided this case in accordance with statutes, the Constitution of the State of Ohio, the Constitution of the United States, and the applicable decisions of this Court. No federal question is therefore presented by the Petitioner.

COUNTER QUESTION OF LAW

Respondents' Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated where their chief appointed counsel had a conflict of interest in that he simultaneously represented a material State's witness involved in the crime without the knowledge or assent of Respondents, and where said chief counsel subsequently represented State's witness in a related civil action.

STATEMENT OF THE CASE

The Respondents herein agree with the Statement of the Case as presented by the Petitioner with the exception wherein Petitioner states that George Bevington was a minor prosecution witness. The Court of Appeals found that State's witness Bevington was a material witness.

REASONS FOR DENYING THE WRIT

The Fifth District Court of Appeals, in its Opinion, stated as follows:

> "Because we find a conflict of interest did exist in Schmuck's representation of the defendants, we find sufficient evidence of inadequacy of defendants' counsel without a requirement that defendants show specific

prejudice resulting from Schmuck's conflicts of interest. *Cuyler v. Sullivan, supra.* This conflict of interest prevented a thorough pre-trial investigation and discovery of Bevington's activities, vigorous cross-examination of Bevington and resulted in a lack of trial procedures designed to show that Bevington was the alleged guilty party rather than the defendants who Attorney Schmuck was appointed to defend. This inadequacy of the defendants' counsel constitutes plain error and requires a new trial for the defendants."

The Court of Appeals, in deciding this particular matter, applied both State of Ohio and all applicable federal decisions in arriving at the conclusion that the Respondents herein were prejudiced and prevented from having a fair trial, and the judgment of the Common Pleas Court of Stark County, Ohio, was reversed and a new trial was ordered.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for the Writ of Certiorari should be denied.

Respectfully submitted,

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